

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EQUICOM COMMUNICATIONS,)	
INC. FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO OPERATE)	CASE NO.
AS A RESELLER OF INTERLATA)	89-127
TELECOMMUNICATIONS SERVICES WITHIN THE)	
COMMONWEALTH OF KENTUCKY)	

O R D E R

This matter arising upon motion of Equicom Communications, Inc. ("Equicom"), filed August 7, 1989 pursuant to 807 KAR 5:001, Section 7, for confidential protection of information filed in response to an Order herein, and it appearing to the Commission as follows:

On July 10, 1989, the Commission entered an Order requesting Equicom to submit certain information regarding its application for a Certificate of Public Convenience and Necessity. In furnishing the information, Equicom has petitioned the Commission to protect from public disclosure information furnished in response to Items 3(b) and 7 on the grounds that public disclosure of the information would result in competitive injury to Equicom.

Item 3(b) requests a copy of any leasing agreement specifying the terms and conditions of the agreement between Equicom and its facilities-based carriers. Such an agreement has been executed by Equicom and LiTel Telecommunications Corporation, the terms of which are the product of extensive negotiations between the

parties. Equicom asserts that these terms are not known outside the companies and are known only by those employees of the companies who must be familiar with them in order to put the agreement into effect. Equicom contends that disclosure of the terms of the agreement would allow Equicom's competitors to duplicate its method of doing business while avoiding the planning process and cost undertaken by Equicom to develop that method. An examination of the agreement does not support Equicom's contentions.

While the agreement does describe the configuration of Equicom's network, that information was previously furnished to the Commission in response to a July 10, 1989 Order of the Commission and is a matter of public record. The agreement does not contain any provisions which are unique and the petition does not identify which, if any, areas of the agreement would be of substantial benefit to Equicom's competitors. Therefore, the information filed in response to Item 3(b) would not be of substantial value to Equicom's competitors.

Item 7 asks for an explanation of how Equicom arrived at its pro forma income estimates of telephone revenues, line charges-fixed expenses, line charges-variable expenses, BOC billings, and commissions to customers. The telephone revenue estimate is based on projected call volumes, billable time per call, and rates. Projected call volumes and billable time per call are products of a market study by Equicom for its initial customer and of preliminary negotiations with a potential second customer. The market study has not been disclosed outside

Equicom's business and its conclusions are known only by those employees of Equicom with a business need for the information. Disclosure of the study to competitors might allow those competitors to eliminate certain steps in the development of their business plans, thereby gaining a competitive advantage at Equicom's expense.

The estimate of line charges-fixed expenses is based on information contained within the Service Agreement with LiTel, and the method used to estimate those expenses cannot be disclosed without disclosing the terms and conditions of the Lease Agreement. As noted above, disclosure of those terms and conditions would not result in competitive injury to Equicom.

The estimate of line charges-variable expenses and the BOC billings are derived from estimates of projected call volumes, which is a product of the market study conducted by Equicom. Therefore, disclosure of the method used to make these estimates would require disclosure of the market study resulting in competitive injury to Equicom.

The estimate of commissions to customers is projected on Equicom's total revenues and commission rates for its customers. The revenues are products of the market study and disclosure of those revenues would require disclosure of the market study resulting in competitive injury to Equicom.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure will result in competitive injury to the person possessing the information in that it will provide the possessor's competitors with an unfair

business advantage. Since the information furnished in response to Item 3(b) would not have competitive value, it should not be protected from disclosure. The information furnished in response to Item 7, except that relating to line charges-fixed expense, are derived from a market study made by Equicom. Equicom invested time and money in conducting this study and in developing a method of operation, and if its competitors, through the record in these proceedings, could gain knowledge of Equicom's method of doing business and the results of Equicom's market survey, it would give those competitors an unfair market advantage. Therefore, the information furnished in response to Item 7 concerning the telephone revenue estimates, the line charges-variable estimate, and the BOC billing estimate should be protected from public disclosure.

While Equicom would like to protect from disclosure the line charges-fixed estimate, it has not established that disclosure of such information would be of sufficient benefit to its competitors so as to provide them with an unfair business advantage. Therefore, that information should not be protected from disclosure.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition by Equicom Communications, Inc. for confidential protection of the terms and conditions of the service agreement between Equicom and its facilities-based carriers furnished in response to Item 3(b) and for confidential protection of the line charges-fixed estimates, used in arriving at its pro

forma income estimate in response to Item 7 of the July 10, 1989 Order is denied. Such information shall be retained as confidential for a period of five working days from the date of this Order and at the expiration of such period placed in the public record.

2. The petition by Equicom Communications Inc. for confidentiality of the telephone revenue estimates, the line charges-variable estimates, the BOC billing estimates, and the commission to customers estimate used in estimating pro forma income furnished in response to Item 7 of the July 10, 1989 Order is granted and such information shall be retained by the Commission as confidential and shall not be open to public inspection.

3. Equicom Communications, Inc. shall, within ten days of this Order, file an edited copy of the responses to Item 7 for which confidentiality has been granted herein, with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

4. Upon compliance with this Order, this matter shall be closed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 8th day of November, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:

Executive Director

Commissioner